

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1480 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

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JIVIBEN WD/O SOMABHAI L PATEL & ORS

Versus

COMPETENT AUTHORITY & DEPUTY COLLECTOR (ULC) &  
ANR.

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Appearance:

Shri P.M. Bhatt, Advocate, for the Petitioners  
Shri A.G. Uraizee, Assistant Government Pleader,  
for the Respondents  
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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 20/08/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Vadodara (respondent No. 1 herein) on 13th November 1984 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at

Ahmedabad (the Appellate Authority for convenience) on 28th February 1992 in Appeal No. Vadodara-11 of 1985 is under challenge in this petition under Articles 226 and 227 of the Constitution of India. By his impugned order, respondent No. 1 declared the holding of the land-holder to be in excess of the ceiling limit by 21054 square meters.

2. The facts giving rise to this petition move in a narrow compass. The petitioners are the heirs and legal representatives of one Somabhai Lallubhai Patel (the deceased for convenience). He filed his declaration in the prescribed form under sec. 6(1) of the Act with respect to his holding within the urban agglomeration of Vadodara. That form was duly processed by respondent No. 1. After observing necessary formalities under sec. 8 of the Act, by his order passed on 13th November 1984 under sub-section (4) thereof, respondent No. 1 declared the holding of the deceased to be in excess of the ceiling limit by 21054 square meters. Its copy is at Annexure A to this petition. It appears that the deceased carried the matter in appeal before the Appellate Authority under sec. 33 of the Act. It came to be registered as Appeal No. Vadodara-11 of 1985. It appears that, during the pendency of the aforesaid appeal, the deceased breathed his last on 10th December 1988 leaving behind the present petitioners as his heirs and legal representatives. They were brought on record in the appellate proceeding. By the order passed on 28th February 1992 in the aforesaid appeal, the Appellate Authority dismissed it. Its copy is at Annexure B to this petition. The aggrieved petitioners have thereupon approached this Court by means of this petition under Articles 226 and 227 of the Constitution of India for questioning the correctness of the order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition.

3. As rightly submitted by Shri Bhatt for the petitioners, the constructed properties could not have been included in the holding of the deceased in view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 SC 1567. It transpires from the material on record that the constructed properties in all admeasuring 93 square meters have been included in the holding of the deceased. They have to be excluded from his holding in view of the aforesaid binding ruling of the Supreme Court.

4. Learned Advocate Shri Bhatt for the petitioners

has made a grievance that the benefit of the ruling of the Supreme Court in the case of Smt. Atia Mohammadi Begum v. State of U.P. and others reported in AIR 1993 SC 2465 should be given in the instant case. As rightly submitted by learned Assistant Government Pleader Shri Uraizee for the respondents, the applicability of the aforesaid binding ruling of the Supreme Court in the case of Smt. Atia Mohammadi Begum (supra) will depend upon examination of certain fact-situation. It appears that the attention of the authorities below could not be focussed on the aforesaid binding ruling of the Supreme Court in the case of Smt. Atia Mohammadi Begum (supra) presumably because it had not seen the light of the day at the relevant time.

5. It cannot be gainsaid that the applicability of the aforesaid binding ruling of the Supreme Court in the case of Smt. Atia Mohammadi Begum (supra) would require answers to the following three questions:

- (i) Was a master plan answering its definition contained in sec. 2(h) of the Act in existence in the area in question on the date of commencement of the Act?
- (ii) What was the situation of the lands in question therein if it was found to be in existence?
- (iii) Were agricultural operations in fact carried on therein on the date of commencement of the Act?

It is obvious that answers to the aforesaid three questions would require investigation into facts. It is better done by respondent No. 1 on the basis of the material on record or the material that may be permitted to be brought on record by and on behalf of the petitioners. The matter will have therefore to be remanded to respondent No. 1 for restoration of the proceeding to file and for his fresh decision according to law in the light of the aforesaid three questions. The impugned orders at Annexures A and B to this petition will have therefore to be quashed and set aside.

6. It is true that the deceased had not brought on record any material showing that the properties in his hands were ancestral properties. It will be open to the petitioners to bring on record the relevant material, if any, in that regard. It will also be open to the petitioners to bring on record the material showing that the area of some land has been reduced on account of the implementation of the town planning scheme.

7. In the result, this petition is accepted. The order passed by the Competent Authority at Vadodara (respondent No. 1 herein) on 13th November 1984 at Annexure A to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 28th February 1992 in Appeal No. Vadodara-11 of 1985 at Annexure B to this petition is quashed and set aside. The matter is remanded to respondent No. 1 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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